Robbing the Victims

Section 22 of the 1989 Social Security Act

STUC
SCOTTISH TRADES UNION CONGRESS
GENERAL COUNCIL

Introduction

Trade unions win over £250 million a year in legal damages for their members, mostly in compensation for injuries at the workplace. This TUC Report sets out the way the Treasury takes a slice - currently £23 million a year - out of damages intended to recompense the victim.

The Report sets out the legal basis for this unfair and unjust levy, the suffering it causes, and the arguments for change.

The Report is based on information from the DSS Compensation Recovery Unit and from the TUC's own unions. It has been prepared by the TUC Working Party on Legal Services, which draws together the legal officers of Britain's twenty-five largest unions.

The law

Section 22 of the 1989 Social Security Act allows the Department of Social Security to reclaim in full all the state benefits paid to an accident victim who has won more than £2,500 in a legal claim against their employer (and similarly in cases of public and motor liability).

The money is deducted from the award before it is paid over to the victim, and all benefits paid by a certain date[1] are subject to being deducted - including Income Support, Unemployment Benefit, Statutory Sick Pay, and Disablement Benefit.

For cases worth less than £2,500, half of the benefits paid are deducted from the damages.

Before the 1989 Act the sums paid under some benefits were deducted from the level of the award, mostly at half rate, whatever the value of the award. But the state did not reclaim that money.

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[1]A certificate of benefits paid is issued on a certain date by the DSS

Why the law is wrong

When these changes were first proposed, the TUC and others argued strongly against them. The TUC Memorandum submitted in 1988 stated:

"33. The TUC believes that the case in principle for the full recovery of State benefits from tort awards has not been established and is firmly opposed to this proposal.

"There is no clear evidence that present arrangements which allow injury victims awarded damages to retain the value of half of some State benefits are leading to over-compensation of injury victims. Indeed, existing evidence strongly suggests the main problem is under compensation.

"There is nothing wrong in injury victims receiving compensation from more than one source if one source alone is inadequate. Moreover, there seems no difference between people contributing to private insurance against risk of injury, the proceeds of which do not affect tort awards, and to social insurance against the same risk. For this reason, the present 50 per cent offset of benefit entitlements recognises the worker's contribution to the financing of NI benefits.

"At the end of the day, the taxpayer would overall gain little from this proposal, even if viewed purely in terms of its impact on their net incomes. The small saving in State benefit expenditure, and in requirements for revenue, would be substantially offset by the extra costs in gross damages and in administration falling on insurers, which would be passed on through higher insurance premiums and the prices of goods and services."

The TUC also objected to the proposals on a number of practical grounds.

The TUC was not alone in its criticisms. A Government-commissioned study by Touche Roche reported that all those interviewed were against the full recovery proposal in principle and for practical reasons, including the CBI and the Association of British Insurers.

The Government's advisory body on the industrial injuries scheme, the Industrial Injuries Advisory Council, submitted a report which stated:

"We do not consider that there is a case, in principle, for full recovery of social security benefits from damages awards and we must continue to express our opposition to any scheme which is designed to implement a 100% recovery and, by implication, deduction.... Moreover, the Touche Ross findings lead inevitably to the conclusion that full recovery of all social security benefits paid cannot fail to be unfair."

The Law Society joined this criticism:

"These proposals will delay settlements..... and could lead to an increase in legal changes. Many victims will consider the claw-back as a form of compensation....."

How much is reclaimed?

After a slow start, the Compensation Recovery Unit's latest statistics[2] show that in 1991/92, £13.19m was recovered from workplace injury victims. In 1992 as a whole, the figure was £23.5m.

That's not a great deal out of the £80 billion social security budget. But it is a great deal of money indeed for the individuals concerned.

During 1992, only 4, 106 personal injury claims worth over £2,000 were settled in the courts, and only 1,072 over £5,000[3]. Most personal injury claims are settled out of court, and those worth less than £2,500 are not affected by the Act.

This suggests that victims securing damages through the courts above the lower claims limit have to repay, on average, over £5,000 out of their award!

This money is not channelled back into the benefit system or the industrial injury scheme, as the Industrial Injuries Advisory Council has suggested. It is, instead, returned to the Treasury.

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[2]Hansard, April 27, 1993, Col 388
[3]Hansard, April 27, 1993, Col 329

The cases

In many cases, these rules are causing severe hardship. These are just a few of the examples reported by unions:

Case A: Back Injury - 94% Reclaimed

Mr A suffered a disabling injury to his back. The medical evidence indicated that pre-existing degenerative changes were present in his spine prior to the accident and that the mishap concerned had accelerated the symptoms. Mr A worked in the extractive industries in a heavy manual job - and the court awarded him £18,000 in damages, on a full liability basis.

By the time the case was settled, Mr A had received £17,000 in benefits and received only £1,000 from his court case.

Case B: Facial Deformity - Low Settlement Forced

Mr B, a 61 year old fire officer, suffered horrific facial injuries when the fire extinguisher he was demonstrating exploded in his face causing permanent facial deformity and chronic depression. His benefits were accruing at the rate of £8,500 a year - so the case had to be settled well below what he should have got because had he held out for more money it would have vanished in recoupment. He eventually gained only £14,307.

Case C: Time Eats Away All of Ammonia Victim's Claim

Mr C was exposed to ammonia gas in circumstances which resulted in him suffering post-traumatic stress disorder, and he was unable to work for the final twenty-two months before his retirement. Although his claim was finally settled at £13,000, his benefit income of £129 a week began to eat into the claim. The longer the case took, therefore, the more his claim would have eroded. Eventually, the benefit income caught up with the value of his claim and all the damages were paid to the DSS.

Case D: DSS Rules make New Car Cost £39,000!

A severely injured union member needed a new motor car, adapted to meet his needs. The actual cost of the car was only £9,000. But the benefits he had received prior to settlement of the case meant that the insurers had to pay interim damages of £39,000 to ensure that the car could be bought on top of the money reclaimed by the DSS.

Case E: Insurers Threaten Erosion to Force Settlement

Mr E eventually accepted the offer made by his employer's insurers, despite the possibility that pursuing his court case might have provided him with higher damages. His solicitors expressed a strong suspicion that the insurers had used the mounting level of benefits to be repaid as a lever to coerce Mr E into settling below what a court might have awarded. Significantly, the insurers specifically referred to the fact that DSS benefits were rising at a rate of £17.68 per week in offers made prior to the commencement of proceedings.

Case F: Insurers Try to Cut Claim to Lower Limit to Avoid Recoupment

Mr F suffered a severe injury to his left elbow. By the time the case was ready to go to trial, the benefits due to be reclaimed had topped £19,000 - so the insurers offered to settle at £2,500 and avoid recoupment. The union persevered, and eventually secured a £49,000 settlement of which Mr F received £30,000. This case illustrates again the way that the rules provide insurers with opportunities to coerce victims into very low settlements.

These few cases are only the tip of the iceberg. As some of them show, many victims are persuaded to settle out of court for far less than they could get by pursing their claim. That represents a substantial saving to employers and insurers - and no saving to the DSS.

In addition, some victims face long delays while on benefit which leave them with very little in the way of recompense for their injuries.

The challenge

The TUC is calling on the Government to repeal Section 22 of the 1989 Social Security Act. Our case is as follows:

- ***Legal damages for personal injury are not a substitute for state benefits***

The Government's case that once a victim has received damages in the courts they can pay back their benefits is wrong. First, there is no double payment - many of the benefits reclaimed have already been paid for by the victim in national insurance contributions or more generally in taxation.

Second, many of the damages reclaimed by DSS are awarded as compensation for disablement, or as punitive damages for fault on the employer's part. These should not be reduced because the DSS has paid for income support.

- ***Legal damages are being reduced to the benefit of insurers rather than victims, and cases dragged out***

As several of the case studies above show, full reclamation means that the incentive for victims is to settle lower than they should, while the incentive for insurers is to drag proceedings out in the hope of putting pressure on victims to settle too low.

This is of benefit only to the insurers - and it undermines the part played by personal injury damages in encouraging employers to take steps to prevent accidents.

Section 22 of the 1989 Social Security Act is a pernicious, unjust piece of legislation which, at minimal benefit to the Exchequer, causes severe hardship to victims who see their awards eroded often simply because of the time taken to settle their case. It lets bad employers off the hook, because it helps to reduce the costs they have to pay for their culpability in letting injuries occur.

Section 22 should be repealed. The TUC will campaign to ensure that it is.

TUC

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